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**Art Iron Inc. and International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL-CIO, Local 55-S. Case 08-CA-219427**

March 21, 2019

**DECISION AND ORDER**

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Art Iron, Inc. (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL-CIO, Local 55-S (the Union) on May 1, 2018, the General Counsel issued a complaint on October 30, 2018, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 19, 2018, the General Counsel filed a Motion for Default Judgment with the Board. On December 27, 2018, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that an answer must be received on or before November 13, 2018, and that if no answer is filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true.

The General Counsel's Motion for Default Judgment indicates that the complaint was served by certified mail on the Respondent at both its business address and at the residential address of the president, Robert P. Schlatter, and copies of the certified mail receipt and the United

States Postal Service tracking confirmation reflect that the Respondent accepted service of each certified mailing on November 2 and 7, 2018, respectively.<sup>1</sup> Further, the motion discloses that, by certified letter dated November 20, 2018, the Region notified the Respondent that unless an answer was received by November 28, 2018, a motion for default judgment would be filed.<sup>2</sup> The Respondent neither filed an answer nor requested an extension of time to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Ohio corporation with an office and place of business in Toledo, Ohio (the "facility"), has been engaged in the fabrication of structural steel. During the calendar year ending December 31, 2017, the Respondent, in conducting its business operations described above, sold and shipped from its facility in Toledo, Ohio goods valued in excess of \$50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Robert Schlatter held the position of owner and president, and has been a supervisor of the Respondent within the meaning of Section 2(11) and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the Unit) constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the [Respondent] at its facility located in Toledo, Ohio, but excluding all office and clerical employees, draftsmen, engineering employees, watchmen, guards, professional employees, supervisors, and employees engaged in erection, installation, or construction work.

<sup>1</sup> The Motion for Default Judgment also states that on October 26 and 29, 2018, counsel for the General Counsel telephoned Mr. Schlatter and left voicemail messages requesting that Mr. Schlatter return the calls and that Mr. Schlatter did not respond.

<sup>2</sup> A copy of the United States Postal Service tracking confirmation reflects that the Respondent accepted service of the certified mailing on November 23, 2018.

Since at least 1988 and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit, and this recognition has been embodied in the parties' successive collective-bargaining agreements, the most recent of which was effective from September 11, 2015, through September 10, 2018. Since at least 1988 and at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

On about December 1, 2017, the Respondent has ceased operations at the facility.

Since about March 9, 2018, the Union has requested, in writing, that the Respondent bargain over the effects of the decision to lay off the Unit and the cessation of operations and business restructuring.

Since about March 9, 2018, the Union has also requested that the Respondent provide the following information:

1. The contract between [the Respondent] and G2000;
2. A description of the services performed for [the Respondent] by G2000;
3. An inventory of all of [the Respondent's] equipment as of December 1, 2017;
4. A list of all [the Respondent's] equipment that has been sold from December 1, 2017 to the present, the purchaser of each piece of equipment, and the amount of money each piece of equipment was sold for;
5. A list of equipment still owned by [the Respondent];
6. A description of [the Respondent's] plans for winding-up the business or any other action it intends relative to [the Respondent];
7. Any documents relating to bids [the Respondent] has made for securing work from December 1, 2017 to the present; and
8. Any documents/information relating to plans for future operations of [the Respondent] or any other business you intend to be involved with. If you intend on being involved in another business, please provide the name of the business and the capacity in which you plan to serve that business.

The above requested information is necessary for and relevant to the Union's performance of its duties as the collective-bargaining representative of the Unit. However, since about March 9, 2018, the Respondent has

failed and refused to furnish the Union with the above described information.<sup>3</sup>

By engaging in the conduct described above, the Respondent failed and refused to furnish the Union with the information necessary for it to engage in effective representation of the Unit with respect to the Respondent's cessation of operations and restructuring.

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the Unit in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the Unit and has been failing and refusing to bargain collectively and in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union since December 1, 2017, about the effects of the cessation of the Respondent's business we shall order the Respondent to bargain with the Union, on request, about the effects of the closing. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not

<sup>3</sup> It is well established that a respondent's asserted cessation of operations does not excuse it from filing an answer to a complaint. See, e.g., *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100-1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 1-16 (2000); *Holt*

*Plastering, Inc.*, 317 NLRB 451, 451 (1995) (respondent was not excused from filing an answer to compliance specification, even though the respondent notified the Board it had "ceased operations and liquidated the plant facilities").

entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).<sup>4</sup>

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on the unit employees of the cessation of business; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, which occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Additionally, we shall order the Respondent to compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Regional Director for Region 8 allocating backpay to the appropriate calendar years for each employee within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Further, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees that the Union requested

on or about March 9, 2019, we shall order the Respondent to furnish the Union with the information requested.

Finally, because the Respondent has ceased operations at the facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its unit employees to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Art Iron, Inc., Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from (a) Failing and refusing to bargain collectively and in good faith with International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL-CIO, Local 55-S (the Union) as the exclusive collective-bargaining representative of the employees in the following appropriate unit about the effects of its decision to cease operations:

All production and maintenance employees employed by the [Respondent] at its facility located in Toledo, Ohio, but excluding all office and clerical employees, draftsmen, engineering employees, watchmen, guards, professional employees, supervisors, and employees engaged in erection, installation, or construction work.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights listed above.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects of the decision to lay off all bargaining unit employees, cessation of operations, and business restructuring, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Provide to the Union the information it requested on or about March 9, 2018.

(c) Pay unit employees their normal wages for the period and in the manner set forth in the remedy section of this Decision and Order.

(d) Compensate any employee who receives backpay under this Order for adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 8, within 21 days

<sup>4</sup> See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, duplicate and mail at its own expense, after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix" to the Union and to all unit employees who were employed by the Respondent on December 1, 2017.<sup>5</sup>

(g) Within 21 days after service by the Region, file with the Regional Director for Region 8 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 21, 2019

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John F. Ring, Chairman

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Lauren McFerran, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

### NOTICE TO EMPLOYEES

#### MAILED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL-CIO, Local 55-S by failing or refusing to bargain over the effects of our decision to cease operations, and to provide the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All production and maintenance employees employed by us at our facility located in Toledo, Ohio, but excluding all office and clerical employees, draftsmen, engineering employees, watchmen, guards, professional employees, supervisors, and employees engaged in erection, installation, or construction work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information it requested since March 9, 2018.

WE WILL, on request, bargain with the Union over the effects of the decision to lay off all bargaining unit employees, cessation of operations, and business restructuring.

WE WILL pay unit employees laid off when we ceased operations in December 2017 their normal wages for the period and in the manner set forth in the remedy section of this Decision and Order of the National Labor Relations Board, with interest.

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 8, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each employee.

ART IRON, INC.

The Board's decision can be found at [www.nlr.gov/case/08-CA-219427](http://www.nlr.gov/case/08-CA-219427) or by using the QR code below. Alternatively, you can obtain a copy of the

decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

